

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Date 1/6/98

URGENT

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to:

OP:E:EO:T:4

Date:

DEC - 1 1998

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated in [REDACTED]. Your articles state that your purpose shall be, among other things, to promote the general welfare of the alumni and fraternity members of [REDACTED]. Incidental to the general purpose shall be the maintenance, operation and regulation of a [REDACTED] chapter house in or about the [REDACTED].

Your incorporation was cancelled on [REDACTED] and reinstated on or about [REDACTED].

On Form 1023, Application for Exemption, you state that your primary purpose is to promote the general welfare of the alumni and members of the [REDACTED]. Although you have sponsored scholarships in the past, currently your activities are primarily related to the purchase and construction of a fraternity house for the local chapter.

Section 501(a) of the Code provides an exemption from federal income taxation for organizations described in section 501(c)(3) of the Internal Revenue Code, including organizations which are organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not operated exclusively for exempt purposes unless it serves a public rather than a private interest. To satisfy this requirement, the organization seeking recognition must establish that it is not organized or operated for the benefit of private interests such as designated individuals. Further, if private interests are served by the activities of the organization and are more than insubstantial, exemption under section 501(c)(3) is precluded, regardless of the number or importance of truly exempt purposes.

Section 1.501(c)(3)-1(d)(3)(i) defines 'educational' as: (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

It has long been the position of the Service that college fraternities and sororities are not exempt educational organizations. That position has been more recently restated in Rev. Rul. 69-573, 1969-2 C.B. 125. Although that ruling recognizes that a typical college fraternity does, to some degree, contribute to the cultural and educational growth of its members, it held that a fraternity is primarily a social club and that its major functions are to provide for its members a meeting place, living quarters, meals and a place for entertainment.

Rev. Rul. 60-367, 1960-2 C.B. 73, held that contributions made to a college for the purpose of acquiring or constructing a housing facility for use by a designated fraternity constitutes allowable deductions by the donor under section 170. It noted that the contribution 'must in reality be a gift to the college and must not be a gift to the fraternity by using the college as a conduit.' Moreover, the ruling stated:

The effect of designation by a donor as to the fraternity house for which his gift is to be used must not be such that his gift is for the benefit of the fraternity rather than for the benefit of the college. Therefore, the college must, as a result of the gift, have the attributes of ownership in respect of the donated property, and its rights as an owner must not, as a condition of the gift, be limited by conditions or restrictions which in effect make a private group the beneficiary of the donated property. The making and acceptance of a gift on conditions which confer substantial rights on a private group are inconsistent with a gift wholly to the college.

Rev. Rul. 64-118, 1964-1 (Part 1) C.B. 182, provides that an organization whose predominant activity is the acquisition, improvement or maintenance of a fraternity chapter house does not

qualify for exemption as an educational organization within the meaning of section 501(c)(3) of the Code. Because the fraternity is not itself an educational organization, assisting in the acquisition and maintenance of a chapter house is not educational in nature. Moreover, the actual operation was determined to be 'for the use and benefit of the members of a local chapter of the fraternity.'

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court states that in order to fall within the claimed exemption, an organization must be devoted to [exempt]... purposes exclusively. This plainly means that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes.

Rationale

You appear to be similar to the organization in Rev. Rul. 64-118, supra. Although sponsoring scholarships is an educational activity, your primary activity is purchasing and constructing a fraternity chapter house, which primarily serves the private interests of the fraternity and its members. See Better Business Bureau v. United States, supra.

Furthermore, unlike the fraternity in Rev. Rul. 60-367, supra, you have not shown that the acquisition and construction of a fraternity chapter house will primarily benefit the university and not the fraternity. The expenditure of funds on this endeavor will be made by you, not the university, and the university does not have the attributes of ownership in respect to the fraternity chapter house.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that

[REDACTED]

person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the Ohio EP/EO key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: OP:E:EO:T:4, SC, Room 6236
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4

OP:E:EO:T:4
[REDACTED]

OP:E:EO:T:4
[REDACTED]